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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 160302174-6174-01]

RIN 0648-BF81

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;
Dolphin and Wahoo Fishery off the Atlantic States; Regulatory
Amendment 1**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Regulatory Amendment 1 for the Fishery Management Plan (FMP) for the Dolphin and Wahoo Fishery off the Atlantic States (Regulatory Amendment 1) as prepared and submitted by the South Atlantic Fishery Management Council (Council). If implemented, this proposed rule would establish a commercial trip limit for Atlantic dolphin for vessels with a Federal commercial permit for Atlantic dolphin and wahoo. The purpose of this proposed rule is to reduce the chance of an in-season closure of the dolphin commercial sector as a result of the annual catch limit (ACL) being reached during the fishing year and to reduce the severity of social impacts caused by these closures.

DATES: Written comments must be received on or before [*INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

ADDRESSES: You may submit comments on the proposed rule, identified by "NOAA-NMFS-2016-0033" by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0033, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Karla Gore, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in required fields if you wish to remain anonymous).

Electronic copies of Regulatory Amendment 1, which includes an environmental assessment, an assessment under the Regulatory Flexibility Act, a regulatory impact review, and fishery impact statement, may be obtained from www.regulations.gov or the Southeast Regional Office Web site at http://sero.nmfs.noaa.gov/sustainable_fisheries/s_atl/dw/2016/reg_am1/documents/pdfs/dw_reg_am1.pdf.

FOR FURTHER INFORMATION CONTACT: Karla Gore, NMFS SERO, telephone: 727-551-5753, or email: karla.gore@noaa.gov.

SUPPLEMENTARY INFORMATION: The dolphin and wahoo fishery of the Atlantic is managed under the FMP. The FMP was prepared by the Council and implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Steven Act).

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the optimum yield from federally managed fish stocks. These mandates are intended to ensure that fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, while also protecting marine ecosystems.

In 2015, the commercial sector for Atlantic dolphin was closed on June 30, 2015 (80 FR 36932, June 29, 2015), as a result of the commercial ACL being met, thereby triggering accountability measures (AMs) and closing the sector. This was the first time the dolphin commercial fishing season was closed as a result of AMs in the history of management of Atlantic dolphin under the FMP. Regulatory Amendment 1 and this proposed rule would establish a commercial trip limit for Atlantic dolphin once 75 percent of the commercial ACL is met. The dolphin commercial ACL had already been increased from 1,157,001 lb (524,807 kg), round weight, to 1,534,485 lb (696,031 kg), round weight, by the final rule for Amendment 8 to the FMP (81 FR 3781, January 22, 2016). The Council has determined that this proposed action would reduce the severity of social impacts of an AM closure of the dolphin commercial sector by increasing the likelihood that the commercial sector will remain open throughout the fishing year.

Management Measures Contained in This Proposed Rule

This proposed rule would establish a commercial trip limit for dolphin for vessels that have a Federal commercial permit for Atlantic dolphin and wahoo.

Dolphin Commercial Trip Limit

Currently, no commercial trip limit exists for vessels that possess a Federal commercial permit for Atlantic dolphin and

wahoo. However, there is a commercial trip limit of 200 lb (91 kg) of dolphin and wahoo, combined, for vessels that do not have a Federal commercial permit for Atlantic dolphin and wahoo but do have a Federal commercial permit in any other fishery, provided that all fishing and landings from that trip occur north of 39° N. lat. (50 CFR 622.278(a)(2)). This proposed rule would establish a commercial trip limit of 4,000 lb (1,814 kg), round weight, for the dolphin commercial sector in the Atlantic, once 75 percent of the commercial ACL is reached. This trip limit would apply to vessels that have a Federal commercial permit for Atlantic dolphin and wahoo, provided that the vessel is not operating a charter vessel or headboat. There would be no applicable trip limit for the dolphin commercial sector in the Atlantic prior to 75 percent of the commercial ACL being reached. The Council determined that establishing this commercial trip limit would reduce the chances of early closures during the fishing year as a result of AMs being triggered, and thereby reduce the severity of any socioeconomic impacts as a result of a commercial sector closure.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Regulatory Amendment 1, other

provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows:

A description of this proposed rule, why it is being considered, the objectives of, and legal basis for this proposed rule are contained in the preamble and in the SUMMARY section of the preamble of this proposed rule. The Magnuson-Stevens Act provides the basis for this proposed rule.

This proposed rule is expected to directly affect federally permitted Atlantic dolphin and wahoo commercial fishermen fishing for dolphin in the South Atlantic and northeastern states (states north of North Carolina) (Atlantic). The Small Business Administration established size criteria for all major industry sectors in the U.S. including fish harvesters. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates),

and its combined annual receipts are not in excess of \$20.5 million (NAICS code 114111, finfish fishing) for all of its affiliated operations worldwide.

From 2010 through 2014, an average of 531 vessels with the Federal commercial permit for Atlantic dolphin and wahoo that landed at least 1 lb (0.45 kg) of dolphin generated total combined revenues (2014 dollars) of approximately \$600,000 from dolphin, \$3.87 million from other species jointly landed with dolphin, and \$15.40 million from all other species in trips where dolphin was not caught. The average annual revenue per vessel from all species, including dolphin, caught by these vessels was \$37,303. Of the 531 vessels, an average of 23 vessels used longline for harvesting dolphin and generated combined total revenues (2014 dollars) of approximately \$361,000 from dolphin, \$1.37 million from other species jointly landed with dolphin, and \$1.89 million from all other species in trips where dolphin was not caught. The average annual revenue per longline vessel was \$82,276 (2014 dollars). Vessels that caught and landed dolphin may also operate in other fisheries, the revenues of which are not known and are not reflected in these totals. Based on revenue information, all commercial vessels directly affected by this proposed rule may be assumed to be small entities.

Because all entities expected to be directly affected by this proposed rule are assumed to be small entities, NMFS determined that this proposed rule would affect a substantial number of small entities. However, the issue of disproportionate effects on small versus large entities does not arise in the present case.

This proposed rule would establish a 4,000 lb (1,814 kg), round weight, commercial trip limit for dolphin for vessels with a Federal commercial permit for Atlantic dolphin and wahoo, once 75 percent of the commercial ACL is reached.

For the first time, the dolphin commercial sector was subject to an in-season closure on June 30, 2015, when the sector's ACL of 1,157,001 lb (524,806 kg), round weight, was reached (80 FR 36249, June 24, 2015, and 80 FR 36932, June 29, 2015). However, the recently implemented final rule for Amendment 8 to the FMP increased the dolphin commercial ACL from 1,157,001 lb (524,807 kg), round weight, to 1,534,485 lb (696,031 kg), round weight (81 FR 3781, January 22, 2016). Using 2015 data for the months open to commercial dolphin harvest during the fishing year and average 2010-2014 data for the months closed to dolphin harvest, NMFS estimated that in the absence of AM closures and commercial trip limits the 2015 commercial landings would have been approximately 1,229,669 lb (557,768 kg), round weight, with a dockside value of \$3,725,896

(2014 dollars). Thus, if the increased dolphin commercial allocation had been in effect in 2015, it is likely that no commercial closure would have occurred.

Based on the increased commercial allocation, and assuming effort in 2016 and onwards would remain the same as estimated for the 2015 fishing year, 75 percent of the commercial ACL would be estimated to be reached on August 25 each year, and the proposed trip limit would then apply for the rest of the fishing year. The projected landings under this scenario would be 1,229,669 lb (557,768 kg), round weight, with a dockside value of \$3,725,896 (2014 dollars). Thus, the proposed trip limit would not result in any reduction in total landings or revenues.

Although total landings or revenues would not be adversely affected, the proposed trip limit would be expected to have disproportionate impacts on vessels, with high-volume vessels such as those using longline gear more adversely affected than others. However, based on the estimated landings and effort distribution by gear type for 2015, the proposed trip limit would not be expected to adversely affect the trips and landings of any vessel regardless of the gear type they used.

Possibilities exist that the dolphin commercial sector may increase future effort and landings so that the total harvest could reach or exceed the commercial ACL if unrestrained by a trip limit. The harvest closure in 2015, even though it happened

before the increase in the commercial ACL took effect, could motivate current participants to increase their effort to take advantage of fishing opportunities before harvest is prohibited. Because the Atlantic dolphin and wahoo commercial permit is an open access permit, new entrants, particularly longliners that fish for highly migratory species, could enter the dolphin and wahoo fishery and increase total effort and harvest. If this occurs, the proposed trip limits could constrain total harvest and prolong the commercial season. Total revenues for a fishing year would be expected to be higher, so long as the higher landings do not substantially depress the dockside price for dolphin. It cannot be determined, however, if higher revenues would translate to higher profits because the trip limit would reduce profit per trip. However, based on available data, NMFS analysis is that the proposed trip limit may be expected to have no adverse effects on vessel revenues, and thus, the proposed trip limit may be considered as a precautionary measure at this time and will not have a significant economic impact on the affected small entities.

No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this proposed rule. Accordingly, this rule does not implicate the Paperwork Reduction Act.

The information provided above supports a determination that this rule would not have a significant economic impact on a substantial number of small entities. Because this rule, if implemented, is not expected to have a significant economic impact on any small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 622

Commercial, Dolphin, Fisheries, Fishing, Trip limits.

Dated: June 23, 2016.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons stated in the preamble, NMFS proposes to amend 50 CFR part 622 as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.278, revise paragraph (a) to read as follows:

§ 622.278 Commercial trip limits.

* * * * *

(a) *Trip-limited permits*--(1) *Atlantic wahoo*. (i) The trip limit for wahoo in or from the Atlantic EEZ is 500 lb (227 kg). This trip limit applies to a vessel that has a Federal commercial permit for Atlantic dolphin and wahoo, provided that the vessel is not operating as a charter vessel or headboat.

(ii) See § 622.280(b)(1) for the limitations regarding wahoo after the ACL is reached.

(2) The trip limit for a vessel that does not have a Federal commercial vessel permit for Atlantic dolphin and wahoo but has a Federal commercial vessel permit in any other fishery is 200 lb (91 kg) of dolphin and wahoo, combined, provided that all fishing on and landings from that trip are north of 39° N. lat. (A charter vessel/headboat permit is not a commercial vessel permit.)

(3) *Atlantic dolphin*. (i) Once 75 percent of the ACL specified in § 622.280(a)(1)(i) is reached, the trip limit is 4,000 lb (1,814 kg), round weight. When the conditions in this paragraph (a)(3)(i) have been met, the Assistant Administrator will implement this trip limit by filing a notification with the

Office of the Federal Register. This trip limit applies to a vessel that has a Federal commercial permit for Atlantic dolphin and wahoo, provided that the vessel is not operating as a charter vessel or headboat.

(ii) See § 622.280(a)(1) for the limitations regarding dolphin after the ACL is reached.

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